Supreme Court, U.S.
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No. 93-1472

In The

Supreme Court of the United States

October Term, 1993

WILBURT A. SEIGEL,

Petitioner,

v.

JAMES ISLAND PUBLIC SERVICE DISTRICT; GEORGE W. FLYNN; GEORGE W. WITHAM; BARBARA M. LADSON; SYLVIA F. PETERS; JOHN B. BRYANT; NANCY H. HADLEY; RAY J. PATTERSON, JR., CONSTITUTING THE MEMBERSHIP OF THE COMMISSIONERS OF THE JAMES ISLAND PUBLIC SERVICE DISTRICT; ROBERT E. WELCH, MANAGER, JAMES ISLAND PUBLIC SERVICE DISTRICT; EDWIN B. QUINN, WASTEWATER SUPERINTENDENT, JAMES ISLAND PUBLIC SERVICE DISTRICT; SINKLER & BOYD, P.A.; THOMAS C. HILDEBRAND, JR.; V. CLAIR ALLEN; STEPHEN E. DARLING; COUNTY OF CHARLESTON; WILLIAM T. HOWELL, JUDGE; J. ALTON CANNON, JR., SHERIFF, CHARLESTON COUNTY; ROBERT MILLER, JR., UNDERSHERIFF, CHARLESTON COUNTY; SOUTH CAROLINA DEPARTMENT OF CORRECTIONS; PARKER EVATT, COMMISSIONER, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS; P. DOUGLAS TAYLOR, WARDEN, LIEBER CORRECTIONAL INSTITUTION,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

BRIEF IN OPPOSITION OF RESPONDENT, WILLIAM T. HOWELL, JUDGE

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QUESTIONS PRESENTED

Respondent, The Honorable William T. Howell, believes that the only questions presented, as they relate to him, are properly stated as follows:

I. Whether the lower courts were correct in holding that a state court judge was absolutely immune from liability under 42 *U.S.C.* § 1983 for his actions in this case?

II. Whether the lower courts were correct in holding that if the Petitioner intended to state a claim for declaratory/injunctive relief, that claim was barred as a matter of law because no case or controversy existed as the allegedly offending judicial order had been abated prior to when the Petitioner instituted this action?

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Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

BRIEF IN OPPOSITION OF RESPONDENT, WILLIAM T. HOWELL, JUDGE

The Respondent, William T. Howell, Judge, respectfully requests that the Court deny the Petition for a Writ of Certiorari of the Petitioner, Wilburt A. Seigel.

OPINIONS AND JUDGMENTS BELOW

The United States Court of Appeals for the Fourth Circuit, on November 10, 1993, affirmed the Order dismissing the Petitioner's Complaint issued by the United States District Court for the District of South Carolina, Charleston Division, on January 10, 1992.

The Opinion of the United States Court of Appeals for the Fourth Circuit is an unpublished, *per curiam* opinion, *Seigel v. James Island Public Service District, et al.*, No. 92-1204 (4th Cir. Nov. 10, 1992), and is found in Appendix A of Petitioner's Petition for Writ of Certiorari, at pages 1-A through 3-A.

The Order of the District Court is not separately published, but has been set out in Appendix B of Petitioner's Petition for Writ of Certiorari, at pages 6-A through 9-A. The District Court adopted, as its Order, the Report and Recommendation of the United States Magistrate Judge which had been rendered on August 5, 1991. That Report and Recommendation is found in Appendix C of Petitioner's Petition for Writ of Certiorari, at pages 10-A through 47-A.

The Petitioner's Petition for Rehearing was denied by the Fourth Circuit on December 16, 1993. The Order denying the Petition for Rehearing is found in Appendix

A to Petitioner's Petition for Writ of Certiorari, at page 4-A.

JURISDICTION

Petitioner cites as his jurisdictional basis 28 *U.S.C.* § 1257(3). A review of that statute indicates that no such subsection exists. In addition, 28 *U.S.C.* § 1257 does not apply to this case, since the *per curiam* unpublished opinion below was rendered by a federal court of appeals, not a state court. *See, Illinois v. Gates,* 462 U.S. 213, 217-221 (1983).

Presumably, Petitioner means to rely on 28 *U.S.C.* § 1254(1) to provide his jurisdictional basis. This case, however, does not present any special or important reason warranting this Court to grant certiorari. *Sup. Ct. R.* 10. Specifically, the decision of the United States Court of Appeals for the Fourth Circuit herein does not conflict with either the decision of another United States Court of Appeals, *Waterman, S.S. Corp. v. United States,* 381 U.S. 252 (1965), or with the decisions of this Court. *Pure Oil Co. v. Suarez,* 384 U.S. 202 (1966). In addition, the decision below does not decide an important question of federal law which has not been, but should be, settled by this Court. *Glus v. Brooklyn Eastern Dist. Terminal,* 359 U.S. 231 (1959). Moreover, the decisions of the lower courts do not depart from, or sanction a departure from, the accepted and usual course of judicial proceedings. The Court should deny the Petition for Writ of Certiorari filed by the Petitioner.

STATUTORY PROVISIONS INVOLVED

42 *U.S.C.* § 1983, which provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

STATEMENT OF THE CASE

This *pro se* civil rights action came before the District Court on a Rule 12(b)(6), *FRCP*, Motion to Dismiss filed by the Respondent, the Honorable William T. Howell ("Judge Howell").[1] The Petitioner's action against Judge Howell arose out of Judge Howell's January 6, 1989, Order to incarcerate the Petitioner for his willful failure to connect to a sewer line maintained by the Respondent, James Island Public Service District ("JIPSD"). The Petitioner claimed that the Order was "suspect, unfair, and violative of his civil rights." Judge Howell's Motion to Dismiss was based on the ground that the Petitioner's

[1] At the time of the actions complained of in this case Judge Howell served as a Circuit Judge for the State of South Carolina. *S.C. Code Ann.* § 14-5-110 (Supp. 1993). He now serves as the Chief Judge of the South Carolina Court of Appeals. *S.C. Code Ann.* § 14-8-20 (Supp. 1993).

Complaint failed to state a claim upon which relief could be granted.

In 1984, the JIPSD instituted a suit against the Petitioner in the Charleston County Court of Common Pleas.[2] The JIPSD sought and was granted an injunction requiring the Petitioner to connect to its municipal sewer system. The South Carolina Court of Appeals affirmed an Order granting the injunction on March 25, 1987.[3] Judgment was entered against the Petitioner on that date.

Subsequently, in 1988, the JIPSD filed a Rule to Show Cause why an Order should not be issued finding the Petitioner in contempt of Court for his failure to comply with the March 25, 1987, Order of Judgment. On October 26, 1988, Judge Howell found the Petitioner in contempt of Court for his voluntary failure to comply with the March 25, 1987 Order. Judge Howell sentenced the Petitioner to six (6) months in jail, but granted him sixty (60) days to hook up to the JIPSD's sewer system, in order to avoid incarceration. The Petitioner petitioned the South Carolina Supreme Court for a Writ of Supersedeas to stay Judge Howell's contempt sentence. The Supreme Court denied the petition on December 16, 1988.

The Petitioner voluntarily chose not to comply with the contempt order by not hooking up to the JIPSD sewer system. On January 6, 1989, Judge Howell ordered the

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[2] *See, James Island Public Service District v. Wilburt A. Seigel* (Civil Action No. 84-CP-10-3476, Charleston County Court of Common Pleas) (*"JIPSD v. Seigel"*).

[3] *See, James Island Public Service District v. Wilburt A. Seigel* (S.C. Ct. App. Memo. Op. No. 87-MO-023, filed March 9, 1987).

Petitioner to begin serving his contempt sentence on January 11, 1989. The Petitioner actually served only one (1) night at the Lieber Correctional Institute ("Lieber"). On February 16, 1989, Judge Howell modified the sentence, substituting a monetary fine in lieu of incarceration.

On January 3, 1991, the Petitioner filed this action alleging, *inter alia*, violation of 42 *U.S.C.* § 1983. Among the Defendants named in this action was Judge Howell. He, as well as, all other Respondents, filed Motions to Dismiss pursuant to Rule 12(b), *FRCP*. After the Petitioner responded to the Respondents' respective motions, the United States Magistrate Judge conducted a hearing on March 20, 1991. During that hearing the parties agreed that the Magistrate Judge would decide the Respondents' motions solely on the motion papers, exhibits, and legal memoranda without resort to oral arguments.

The Magistrate Judge issued his written Report and Recommendation on August 5, 1991, granting all of the Respondents' motions. The Petitioner timely filed objections to the Magistrate Judge's Report. *See* 28 *U.S.C.* § 636(b)(1)(C). The case was heard *de novo* by the United States District Court Judge who, by order dated January 10, 1992, adopted the Magistrate Judge's Report and Recommendation as the Order of the District Court.

The Petitioner timely appealed the District Court's Order to the United States Court of Appeals for the Fourth Circuit. The Court of Appeals affirmed the District Court's Order in a *per curiam* rendered on November 10, 1993. The Petitioner filed a Petition for Rehearing which the Fourth Circuit denied on December 16, 1993. The Petitioner now seeks a Writ of Certiorari to review the

decisions below which dismissed his action against all of the Respondents, including Judge Howell.

SUMMARY OF THE ARGUMENT

In all matters related to this case Judge Howell acted solely in his judicial capacity. He was absolutely immune from any liability under 42 *U.S.C.* § 1983. In addition, even if the Petitioner sought declaratory/injunctive relief, the Petitioner did not have standing to assert that claim since Judge Howell had abated the Order of Incarceration. The lower courts were correct in dismissing the Petitioner's Complaint against Judge Howell.

ARGUMENT

I. THE PETITIONER'S 42 *U.S.C.* § 1983 CIVIL LIABILITY CLAIM AGAINST THE RESPONDENT, THE HONORABLE WILLIAM T. HOWELL, CIRCUIT JUDGE, WAS BARRED BY THE DOCTRINE OF JUDICIAL IMMUNITY.

In ruling on a 12(b)(6), *FRCP*, motion, the lower courts were required to presume all factual allegations of the Complaint to be true. *Miree v. DeKalb County, Georgia*, 433 U.S. 25 (1977). Legal conclusions and opinions couched as factual allegations, however, were not to be given a presumption of truthfulness. *Davidson v. State of Georgia*, 662 F.2d 895 (5th Cir. 1980); *Bryan v. Stillwater Board of Realtors*, 578 F.2d 1319 (10th Cir. 1977).

A motion under Rule 12(b)(6), *FRCP*, must be granted if an affirmative defense is apparent from the face of the Complaint.[4] Dismissal was required by the lower courts if the allegations of the Petitioner's Complaint demonstrated that Judge Howell was absolutely immune from the claim. *Mireless v. Waco*, ___ U.S. ___, 112 S. Ct. 286, 287 (1991) (per curiam); *Forrester v. White*, 484 U.S. 219 (1988); *Dennis v. Sparks*, 449 U.S. 24 (1980); *Butz v. Economou*, 438 U.S. 478 (1978); *Imbler v. Pachtman*, 424 U.S. 409 (1976).

It was clear from the face of the Petitioner's Complaint, and the lower courts found, that Judge Howell was absolutely immune from the Petitioner's claims against him. The Petitioner acknowledged that Judge Howell had jurisdiction of the case pursuant to *S.C. Code Ann.* § 6-11-1250 (1976) when he entered the January 6, 1989, Order of Incarceration. It was undisputed that the Petitioner's claim against Judge Howell arose out of acts Judge Howell undertook in his judicial capacity. 2 S. Nahmod, *Civil Rights and Civil Liberties Litigation: The Law of Section 1983*, § 7.07 (3d ed. 1991) (citing *Stump v. Sparkman*, 435 U.S. 349, 356 (1978)). Accordingly, the 42 *U.S.C.* § 1983 damages claim was barred by the doctrine of judicial immunity.

This Court adopted the doctrine of judicial immunity in 1872. The Court recognized that it was a general principle of

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[4] Material which is submitted as a part of the Complaint, as well as items in the public record can be, and presumably was, considered by the lower courts. *Phillips v. Bureau of Prisons*, 591 F.2d 966 (D.C.Cir. 1979), (citing 5 C. Wright and A. Miller, *Federal Practice and Procedure*, § 1357 (1969)).

the highest importance to the proper administration of justice that a judicial officer, in exercising the authority vested in him, "[should] be free to act upon his own convictions without apprehension of personal consequences to himself." *Bradley v. Fisher*, 13 Wall. 335, 347 (1872). The lower courts properly adopted this proposition.

Judicial immunity recognizes that a judge may err. The policy behind the defense also recognizes, however, that it is better for a judge, when exercising the discretion inherent in his judicial power, "to risk some error and possible injury from such error than not to decide or act at all." *Scheuer v. Rhoades*, 416 U.S. 238, 242 (1974). The Petitioner's disagreement with Judge Howell's Order does not strip Judge Howell of his immunity. The immunity applied "however erroneous the act may have been and however injurious [were] its consequences" to the Petitioner. *Bradley*, 13 Wall. 335, 347.

Judicial immunity applies even when the judge is accused of acting maliciously and corruptly. *See, Sparkman*, 435 U.S. 349, 356. As the *Bradley* Court stated, this immunity "is not for the protection or benefit of a malicious or corrupt judge but for the benefit of the public, whose interest it is that the judges function with independence and without fear or intimidation." *Id.*, 13 Wall. 335, 349. In *Pierson v. Ray*[5], this Court held that this common-law absolute immunity of judges for their judicial acts

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[5] 386 U.S. 547 (1967) (Court held absolute immunity shielded a municipal judge who was sued for monetary damages under 42 *U.S.C.* § 1983 by clergymen who alleged that he had convicted them unconstitutionally for a peaceful protest against racial segregation).

also applied to claims under federal statute 42 *U.S.C.* § 1983. Therefore, the Petitioner's claim against Judge Howell for damages pursuant to 42 *U.S.C.* § 1983 was barred as a matter of law. The lower courts properly applied the applicable law.

II. ASSUMING THE PETITIONER INTENDED TO STATE A CLAIM FOR DECLARATORY/INJUNCTIVE RELIEF, THAT CLAIM WAS BARRED AS A MATTER OF LAW BECAUSE NO CASE OR CONTROVERSY EXISTED AS THE RESPONDENT, THE HONORABLE WILLIAM T. HOWELL, CIRCUIT JUDGE, ABATED HIS ORDER OF INCARCERATION.

Judicial immunity does not extend to a 42 *U.S.C.* § 1983 action for declaratory/injunctive relief. *Pulliam v. Allen*, 466 U.S. 522 (1984). Given the liberality with which the Petitioner's *pro se* Complaint must be reviewed by the lower courts on a motion to dismiss, the Petitioner's Complaint could have arguably been broadly interpreted to request declaratory and/or injunctive relief.

Even if the Petitioner's Complaint could be interpreted to have sought declaratory/injunctive relief the Petitioner lacked standing to present the claim, and the lower courts lacked jurisdiction to hear the Petitioner's request. Standing is a jurisdictional issue, as opposed to a procedural one. The judicial power of the federal courts is constitutionally limited to the adjudication of "cases" or "controversies." *U.S. Const.* art. III, § 2. The existence of a case or controversy

> 'depends upon whether the person seeking relief has alleged a sufficient personal stake in

> the outcome to assure that the Court will be called upon to resolve real issues between genuine adversaries rather than merely to give advisory opinions with respect to abstract or theoretical questions.'

Fowler v. Alexander, 478 F.2d 694 (4th Cir. 1973) (quoting *Abele v. Markle*, 452 F.2d 1121, 1124 (2nd Cir. 1971)).

As the Petitioner's Complaint plainly indicated, the Petitioner was no longer in jail nor was the Order of Incarceration still in effect at the time he filed this action. The Petitioner was not entitled to declaratory or injunctive relief. He was unable to show that he was in real, immediate danger of sustaining some direct injury as a result of the challenged official conduct. Abstract injury is not enough. The injury, or threat of injury, must be "real and immediate", not "conjectural or hypothetical." *City of Los Angeles v. Lyons*, 461 U.S. 95 (1984); *Rizzo v. Goode*, 423 U.S. 362 (1976); *Golden v. Zwickler*, 394 U.S. 103 (1969).

It was unclear why or how a specific procedure, or the lack of a procedure, to specify the location of incarceration could have been harmful to the Petitioner. Since the allegedly offending order had been abated; the Petitioner did not face any real or immediate threat of incarceration. The Petitioner was, likewise, under no present threat of transportation to a place of incarceration. The likelihood that he would be incarcerated in the future was remote and speculative in the extreme. Even if litigation was to be initiated again between the Petitioner and the JIPSD, there was no reason to assume that the Petitioner would be found in contempt of court. There was also no reason to assume that if he was found in contempt of court, there

would be the sentence of incarceration as opposed to a monetary fine.

CONCLUSION

The United States District Court for the District of South Carolina and the United States Court of Appeals for the Fourth Circuit correctly determined that the Petitioner's 42 *U.S.C.* § 1983 damages claim against Judge Howell was barred by the doctrine of judicial immunity. The remaining claim, if indeed one was implied, for declaratory or injunctive relief concerning the procedure of a judge to specify the place of incarceration in an order of incarceration was also barred as the Petitioner did not have standing to present the claim because the issue was moot.

The lower courts properly dismissed the Petitioner's Complaint for failure to state a claim for relief against Judge Howell. Consequently, this Respondent respectfully requests that the Court deny the Petition for Writ of Certiorari filed by the Petitioner.

Respectfully submitted,

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